

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Second Delegated Legislation Committee

DRAFT ENVIRONMENTAL PERMITTING (ENGLAND AND WALES) (AMENDMENT) (NO. 2) REGULATIONS 2016

Tuesday 8 March 2016

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Saturday 12 March 2016

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The Committee consisted of the following Members:

Chair: SIR EDWARD LEIGH

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| † Cartlidge, James (<i>South Suffolk</i>) (Con) | † Pow, Rebecca (<i>Taunton Deane</i>) (Con) |
| † Cunningham, Alex (<i>Stockton North</i>) (Lab) | † Sharma, Mr Virendra (<i>Ealing, Southall</i>) (Lab) |
| † Fletcher, Colleen (<i>Coventry North East</i>) (Lab) | Sheerman, Mr Barry (<i>Huddersfield</i>) (Lab/Co-op) |
| † Ghani, Nusrat (<i>Wealden</i>) (Con) | † Smith, Royston (<i>Southampton, Itchen</i>) (Con) |
| † Kennedy, Seema (<i>South Ribble</i>) (Con) | † Spencer, Mark (<i>Sherwood</i>) (Con) |
| † Lord, Jonathan (<i>Woking</i>) (Con) | † Stewart, Rory (<i>Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs</i>) |
| † Mann, John (<i>Bassetlaw</i>) (Lab) | |
| † Morris, Grahame M. (<i>Easington</i>) (Lab) | Glenn McKee, Martin Adams, <i>Committee Clerks</i> |
| † Newton, Sarah (<i>Truro and Falmouth</i>) (Con) | |
| † Parish, Neil (<i>Tiverton and Honiton</i>) (Con) | † attended the Committee |

Second Delegated Legislation Committee

Tuesday 8 March 2016

[SIR EDWARD LEIGH *in the Chair*]

Draft Environmental Permitting (England and Wales) (Amendment) (No. 2) Regulations 2016

2.30 pm

The Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs (Rory Stewart): I beg to move,

That the committee has considered the draft Environmental Permitting (England and Wales) (Amendment) (No. 2) Regulations 2016.

The regulations are designed to simplify the permitting process and make more straightforward the way in which we deal with works in rivers. Previously, the process was governed by complicated legislation from the 1970s and 1990s that ensured that a bespoke permit requiring a detailed application and assessment was needed for anything that happened in relation to a river, whether that concerned bridges, culverts, outflow pipes or work on banks.

The new system is an attempt to move to a more straightforward procedure whereby in the highest-risk cases—around half of cases—a bespoke permit is still required, but for others there is a simplified process. For some excluded categories, there will be no need for anything at all. Simple, straightforward works, such as putting a ladder or piece of scaffolding in the river temporarily, will not require any form of permit.

The second type of procedure is an exempt procedure, for which all that is necessary is for someone to register the works.

Neil Parish (Tiverton and Honiton) (Con): I am interested in the ideas that my hon. Friend the Minister is putting forward. Will the regulations make it easier or more difficult to get a permit if, for example, there was local management of a river and we wanted to do a little dredging here and there?

Rory Stewart: Provided that the dredging work being undertaken was in the category for a registered exemption, all someone would have to do for works under 1.5 km is register that they were doing them and ensure that they had fulfilled the conditions of the exemption. They would then be able to proceed with the work. In the past, they would have had to make a bespoke application with a lot of detailed plans and drawings that would be considered on a case-by-case basis. We believe, though, that in low-risk cases of agricultural dredging that are not in areas of special scientific interest, it should be possible for people to fulfil a simple registration, follow the conditions and proceed. An example would be regular winter dredging.

There are essentially four different categories. The first, which I touched on briefly, is the excluded category, for which no permit at all is needed. For the second—the exempt category—people simply register online.

The third category is the standard rule permit, which requires people to seek permission—it is not just registration—and they have to follow standard conditions. For example, if someone is running an electric cable across the river, the conditions relate to putting it 1 metre or 1.5 metres under the river bed, starting around 8 metres from the edge of the river. There is, though, still a requirement for the agency—in this case the Environment Agency—to check the plans and drawings to ensure that the person has complied.

The final category is where the bespoke permits remain in place, but they are reduced to around half of cases.

John Mann (Bassetlaw) (Lab): If one of my neighbours has a house adjoining the river, they potentially have a vested interest in any works that are done. What rights would they have to know about works being carried out and to object to the detail of how those works were done, in order to protect their own land and property?

Rory Stewart: The hon. Gentleman asks a very good question. We have to differentiate three different questions: first, the nature of that person's interest in that river; secondly, the nature of the work being undertaken; and, thirdly, the existing procedures to go through some form of objection.

I will take the categories in turn. To take the most simple case in the exempt category, for someone putting a ladder in the river that is removed at the end of the day, the answer to the neighbour is that that is an exempt activity, and the neighbour would have no opportunity to object.

For the second category, let us imagine that someone is running a more complicated utility across a river, such as an electric cable. If it was covered under one of the exempt categories, a registration would be submitted and there would be a possibility to examine that registration. If the activity registered did not comply with the standard conditions, such as if that cable had not been put 1 metre under the river bed or placed 8 metres from the edge of the river bank, there would be the possibility for the Environment Agency to intervene.

For the third category, which is more complicated work—not a simple wooden footbridge, but the insertion of a larger single-span bridge, perhaps with concrete piles—it would be necessary to go through a procedure and to understand the rules under which such plans would need to be submitted, and the Environment Agency would review.

Finally, if it was a very complex piece of work that would require a bespoke permit, a full case-by-case examination would have to take place.

We are simplifying the paperwork, and the benefit of that is that we move away from a complicated application for flood defence consent in which people were forced to fill in detailed plans and drawings, even for quite trivial works in the river. There were two problems with the complicated application. First, in certain cases, people were wasting a lot of time and energy, spending half an hour filling in the form and hours preparing their plans. The second probably more serious problem was that, in

many cases for trivial works, people probably simply circumvented the law and did not fill in the documents in the first place, which was not to be encouraged.

We are moving to a situation where we will be much clearer that simple trivial works are exempt. If, on the other hand, people need to proceed, we have a much simpler form. People tick what they are doing, such as “repair of the floodbank”, and fill the form in. It takes about five minutes. For those simple types of work that will not have a significant impact either on the flow of the river or on floodwater moving around the side of the river, there should be no serious impact.

The second thing we are doing is that we are rationalising some of the legal anomalies in the environmental permitting regulations. For the 5% of cases where it was necessary in the past to apply for two separate permits—people had to fill two separate application forms and receive two different permits: one environmental permit and one flood permit—we are putting regulations in place that will allow people to have a single process with a single permit and a single application form. By doing so, we will ensure that the Environment Agency is focused on the most risky, most serious activity and that it does not waste its time looking at trivial things. It will therefore have a better quality of attention, which will be better for our environment and our flood risk. With that, I commend the regulations to the Committee.

2.38 pm

Alex Cunningham (Stockton North) (Lab): It is a pleasure to serve under your chairmanship this afternoon, Sir Edward. I am pleased to have the opportunity to share my thoughts on the regulations and to follow up with the Minister on several points that I have already raised in the House through other means.

The issue of flooding and the need for better water management that comes hand-in-hand with it have regularly been in the headlines since the beginning of December last year. Rightly, much consideration has been given to the issues, including how best to minimise flood risk. It is therefore timely that the regulations have finally come before us today, with the relevant consultation having concluded some 12 months ago. The explanatory memorandum published alongside the regulations is helpful in setting out their objectives—the Minister has outlined them—which are

“to reduce administrative burdens on applicants undertaking activities which require prior approval because they may impact on flood risk or flood risk management.”

It is important to set the issues we face today in the context of what has gone before, so that we can examine the regulations and seek assurances that they do not compromise the effects of positive past measures.

By way of background, prior consent has been required before certain activities are undertaken on main rivers since the passage of the Water Resources Act 1991, with various byelaws having since been passed by the Environment Agency and Natural Resources Wales. It is perhaps appropriate to highlight up front that one of the core functions of the Environment Agency is to

“operate at the place where environmental change has its greatest impact on people’s lives”,

including undertaking work to

“reduce the risks to people and properties from flooding”.

Currently, the dredging of silt, sand or other material from main watercourses is regulated under the Environmental Permitting (England and Wales) Regulations 2010, as amended. We need to be assured that the proposed changes will not compromise what those existing regulations achieve.

The regulations before the Committee—made under powers in sections 61 and 90 of, and schedule 8 to, the Water Act 2014—will establish a new scheme under the environmental permitting framework to regulate activities on or near watercourses in England and Wales. More specifically, the regulations provide for the regulation of “flood risk activities”, replacing the current flood defence consent scheme. Managing such risks is a vital role of both the Environment Agency and Natural Resources Wales respectively. Without such regulation, a host of activities, when carried out on or near main rivers and streams, can significantly affect flood risk. It is a well established principle that, in an effort to avert that possibility, flood defence consent must be sought. Without such regulation, watercourses and flood plains could become blocked or constrained by works, leading to flooding and damage to other property that might otherwise not have occurred. In a similar vein, flood defence structures might also be damaged with the same effect, or maintenance activities could cause environmental harm.

In short, such construction works and maintenance activities, when poorly executed, can increase flood risk, directly cause and/or exacerbate flooding, and cause damage to the surrounding natural environment. It is for precisely those reasons that prior permission, in the shape of flood defence consent, is required before works can legitimately be carried out. Consents are issued with precise conditions to ensure that the prescribed activities are carried out in such a way that increased flood risk or the likelihood of damage to the environment are minimised.

The Environment Agency and Natural Resources Wales issue some 5,000 flood defence consents each year, which is clearly no small feat, and it is logical that both bodies would seek to streamline their processes to lessen the administrative burden not only on themselves but on applicants, too. Indeed, the Environmental Permitting (England and Wales) Regulations 2010 did precisely that, rationalising various permitting regimes into a common platform that is easier to understand and use. Measures to progress that further and better harmonise the consent process are uncontroversial. There is an element of common sense in allowing applicants who would otherwise require several permits for activities falling under various regulations on a single site to complete a single application and to be issued with one permit. The Minister has covered that.

With further Government cuts to the Department and to the Environment Agency, and with the huge strain that the organisation is under as a result, it is hardly surprising that further efficiencies are required. Fewer boots on the ground or, as my researcher suggests, wellies in the mud, inevitably mean that the organisation’s capacity will be stretched to its limits—some would suggest beyond them.

The regulations will allow the Environment Agency and Natural Resources Wales to concentrate their resources, as the Minister said, on what are deemed to be higher-risk activities. However, I would welcome it if the Minister

[Alex Cunningham]

explained risk a little more. How, for example, is risk calculated and modelled in these instances? What factors are accounted for when producing such calculations, and who will have responsibility for making the final judgment on whether an activity is high or low risk?

If streamlining processes is the key aim, surely such assessments cannot be conducted on a case-by-case basis, as doing so would require a greater time commitment than the current regime. Going one step further, how will the conduct of low-risk activities be monitored to ensure conformity with the prescribed conditions? What retrospective assessment is being considered to ensure that risk was properly assessed prior to works being carried out?

I will not need to remind the Minister that, in answer to one of my written parliamentary questions last month, he stipulated that:

“The Government believes that flood risk management...should be carried out by those best placed to do it.”

Who is best placed to carry out such flood risk management work? I am sure he will agree that risk, whether determined as being high or low, should be mitigated to the highest possible degree wherever it is identified, yet the role of the regulators is being restricted on that front.

It is also important that the Minister clarifies how his Department will develop and maintain effective national strategies and approaches to flooding and flood defences when activities such as these are being signed off without consent. Building on that point, I would be grateful if he could outline what thought he has given to granting further powers to expert groups, such as internal drainage boards and local authorities, to maintain watercourses.

The Minister knows that he would not be in a debate with me standing opposite him if I did not raise the issue of resources. Yesterday, he spoke of his hopes that the new regulations relating to waste management and the circular economy would save money for local authorities. Today's regulations also appear to aim to reduce burdens in different parts of the system, but can he give a categorical assurance that organisations such as local authorities, drainage boards and others required to deliver more will have the resources to carry out the role he will require of them?

Finally, what plans does the Minister have to review the impact of the changes in the regulations on our communities and environment, so that Parliament can assess whether they are working or whether greater controls will be required in the future? I look forward to hearing his response.

2.45 pm

John Mann: Thank you, Sir Edward. It is delightful to speak under the chairmanship of my neighbour in a flood risk area, with the River Trent between our constituencies. I want to congratulate the Minister on what is an excellent set of proposals, not least due to the possibilities contained within them of repair and protection of banks using natural materials and repair of bank slips and erosion.

Stripping out some of the bureaucracy for the many watercourses that flow into the Trent through Bassetlaw has been a significant issue over many years in the many

villages, including my own, that have suffered from flooding. The losses, of course, are to the householder, the employer and the community in terms of amenities, particularly when such problems result in damage to property. The council bungalows in Hablesthorpe, in which pensioners abode, are a good example of where effective work in advance of the kind being exempted in the regulations would have made a likely difference. I therefore congratulate the Minister.

Before I wholeheartedly welcome the regulations on behalf of the people of Bassetlaw, I want to check there is nothing in them that will lead to increased financial charges for anyone attempting to do anything. If there is, we ought to be made aware of it, because it would be a bad thing and would negate the Minister's brilliance in bringing forward this set of proposals.

The Chair: I thank the hon. Gentleman for that. The Trent may divide our constituencies, but it can never divide our friendship.

2.48 pm

Rory Stewart: We have heard two serious interventions on different issues. The hon. Member for Stockton North focused on the issues of dredging, risk, resources and who is best placed to deal with these issues, while the hon. Member for Bassetlaw focused on banks and charging. I will take them in reverse order.

I am pleased that the hon. Member for Bassetlaw recognises the significant changes that will happen in terms of work on banks. That is a way of addressing some of the concerns raised by the hon. Member for Stockton North. The principle is one of looking at what “minor works” on banks mean—less than 10 metres, for example, would require only a registered exemption, while less than 20 metres would be under a standard rules permit. That is a big change from the old system, where a bespoke permit was needed for any work at all done on a bank.

I can reassure the hon. Member for Bassetlaw that the regulations are not introducing charges. There is, of course, a legal possibility for charges to be looked at, but they would be looked at under a separate instrument following a detailed consultation. I reassure him that we are not debating the question of charges today.

That brings me to the powerful speech made by the hon. Member for Stockton North. I will run through the various issues he raised. A lot of people have talked about dredging. Although we have exclusions and exemptions in relation to that, they have to follow very clear standard conditions. If those standard conditions are not met, that dredging is not legitimate. That relates to the question raised by the Chair of the Environment, Food and Rural Affairs Committee, my hon. Friend the Member for Tiverton and Honiton. We cannot dredge if, for example, we are dredging into an area with a site of special scientific interest, or a Ramsar site. This applies only to dealing with agricultural drainage ditches that are considered within the main river system. It would tend to apply, generally speaking, to low-lying areas. We are not talking about massive flood alleviation schemes. Our engineers believe that the requirement of limiting work to 1.5 km will deal with any serious issues around flooding.

Rebecca Pow (Taunton Deane) (Con): Will the Minister comment on the proposals for the short areas that farmers, for example, might dredge? If they had been allowed to do that previously and to apply for these permits—I have talked to lots of farmers in Somerset about this issue—might it have helped to reduce the awful flooding that we saw in 2014-15?

Rory Stewart: That is a very good question. I think the answer to my hon. Friend is that in an extreme weather event, such as the sort she saw in Somerset, the regular removal of silt from a 1.5 km-ditch is unlikely to have a significant impact on downstream flooding. What it would do in normal cases of winter flooding, is reduce the flooding of agricultural fields which would be good. So it is good for the general operation of farm business in normal winter flooding situations, but in an extreme weather event I am afraid that 1.5 km of silt removal is unlikely to tip the difference.

Seema Kennedy (South Ribble) (Con): I welcome these proposals. As my hon. Friend the Minister knows, I also have many low-lying agricultural areas in my constituency that have suffered from flooding. Many of my farmers have asked for simplification about dredging and I wondered how the Department will communicate this simplification to landowners, so that they know about it and can save time in what they are doing.

Rory Stewart: My hon. Friend asks a very good question. The answer is that we began the communication process through a highly publicised speech given by the Secretary of State at the Oxford farming conference, which got a lot of coverage in the agricultural press. There is increasing awareness now among the farming community of this future exclusion, but clearly we can do more. We will do our best to work with my hon. Friend, with the Chair of the Environment, Food and Rural Affairs Committee, and particularly with the trade press, to make sure that farmers are now aware of the new procedures. In my experience, farmers generally cotton on very quickly to these kinds of legislative changes, but I am happy to take up the challenge if they want.

I will move forward to address the questions put by the hon. Member for Stockton North. Regarding the question of the calculation of risk and who calculates it, essentially that process has been led by water engineers within the Environment Agency. Some of the exclusions and exemptions are genuinely very low risk indeed. If we look through the list of the exclusions, it was necessary in the past to obtain a bespoke permit, in theory even if someone was just putting a floodgate over their house. Ambiguities within the legal drafting meant that anything that could possibly affect the flow of water, such as someone not letting water into their front door, could have required a bespoke permit.

In the past, putting a sign into a river required an entire bespoke permit. Now, there is absolutely no engineering evidence whatsoever that sticking a small pole into a river will have a significant impact on flooding downstream. However, to reassure the hon. Gentleman, I will point out that the process is very much driven by a cautionary principle—people are being very risk-averse. We have made sure that we have excluded only the very lowest risk activities. Again,

registered exemptions are very carefully controlled. In fact, we have had some complaints from people who would like to see us go much further.

The reason we have had to be quite careful is that the measure has to apply to all rivers across the country; it is not possible for us to come up with a single set of rules without being very cautious. For example, there is a standard exemption for scaffolding to extend across 10% of a river. People come back to us and say, “Well, that doesn’t make much sense. If my river is only eight miles wide, you are allowing me to put only 0.8 meters of scaffolding into the river.” The reason for that is that we have to make sure we are very, very cautious, which is why nearly half of these cases will still require bespoke permits. We have to deal with the fact that every river is different, every condition is different and the hydrology of these different river systems is very testing. However, in straightforward cases—a noticeboard or a ladder going into a river, or a simple piece of work on banks, as mentioned by the hon. Member for Bassetlaw—we have taken the view that a calculated risk makes sense.

Finally, on the question of who is best placed to make such decisions, whether on IDBs or the action of local councils, the draft regulations apply primarily to main rivers, which is to say the rivers and streams that we believe have a significant impact on a large degree of flooding. Most of the local authority responsibility will relate to flood risk in general and include a lot of rivers that are not classified under the regulations as a “main river”.

In terms of the resources to be brought to bear, we believe that rather than imposing more costs on individuals, the Environment Agency should be saved about half a million pounds a year—a significant saving—and businesses about £14 million over 10 years. Those financial savings are only the beginning, from my point of view; the real saving is getting rid of the forms. Nothing is more eroding to trust in Government in the general sense of energy and common sense in action than having to fill out forms to put a ladder or a simple signpost into a river.

Alex Cunningham: I thank the Minister for his explanation. None of us doubts the wise measures in place as far as the smaller things are concerned, but I am concerned about monitoring some of the more extensive work that will not require the same level of permit as in the past.

Rory Stewart: In order to deal with the serious stuff, which is to do with major works on bridges, culverts, banks, utility crossings and outflows—water coming in—a full, bespoke Environment Agency permitting system is in place and covers nearly 50% of the applications. Officers in such cases will require full plans, drawings and impact assessments, will have to inspect the individual rivers and will look in detail at the proposed works case by case.

Alex Cunningham: I am sorry—I think I just invited the Minister to repeat what he said earlier—but I am talking about what will not require a permit under the regulations. He started to talk about the more extensive work, but he has addressed that; I am asking about the marginal stuff, where there will be changes. For example,

[Alex Cunningham]

1.5 km of river is a fairly extensive piece of river, so I am interested in what monitoring of that will be like in future, so that we know the new regulations are working.

Rory Stewart: Dredging and the 1.5 km are perhaps a misleading example. That is about maintenance of silt levels in existing agricultural drainage ditches in areas that are not of environmental importance. The rest of the things that are excluded are, genuinely, very minor works indeed. We are literally getting down to the level of a ladder or a sign board being put daily into the river; a service crossing with an existing structure, or, in other

words, someone putting an electric wire through a pipe that already exists in a bridge; a 48-hour temporary trial pit; an investigation borehole; or clearance of sediment traps. For anything above that, such as exposed gravel removal, a large outfall or headwall, or a large habitat structure, the full regulatory system remains in place. I hope that reassures the hon. Gentleman and the rest of the Committee. I commend the draft regulations to the Committee.

Question put and agreed to.

2.58 pm

Committee rose.